

# D R A F T

## Joint Proposal

### **Affiliated Tribes of Northwest Indians And United South and Eastern Tribes, Inc.**

For  
109th CONGRESS  
2nd Session  
Relating to:  
**S. 1459**  
**H. R. 4322**

To provide for Indian trust asset management reform and resolution of historical accounting claims, and for other purposes.

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## **A BILL**

To provide for Indian trust asset management reform and resolution of historical accounting claims, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) Short Title- This Act may be cited as the 'Indian Trust Reform Act of 2005'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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Sec. 102. Definitions.

Sec. 103. Individual Indian Accounting Claim Settlement Fund.

Sec. 104. General distribution.

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Sec. 503. Under Secretary for Indian Affairs.

Sec. 504. Transfer of functions of Assistant Secretary for Indian Affairs.

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## **TITLE VI--AUDIT OF INDIAN TRUST FUNDS**

Sec. 601. Audits and reports.

Sec. 602. Authorization of appropriations.

## **TITLE I--SETTLEMENT OF LITIGATION CLAIMS**

### **SEC. 101. FINDINGS.**

Congress finds that --

- (1) Congress has appropriated tens of millions of dollars for purposes of providing an historical accounting of funds held in Individual Indian Money accounts;
- (2) as of the date of enactment of this Act, the efforts of the Federal Government in conducting historical accounting activities have provided information regarding the feasibility and cost of providing a complete historical accounting of IIM account funds;
- (3) in the case of many IIM accounts, a complete historical accounting--
  - (A) may be impossible because necessary records and accounting data are missing or destroyed;
  - (B) may take several years to perform even if necessary records are available;
  - (C) may cost the United States hundreds of millions and possibly several billion dollars; and
  - (D) may be impossible to complete before the deaths of many elderly IIM account beneficiaries;
- (4) without a complete historical accounting, it may be difficult or impossible to ascertain the extent of losses in an IIM account as a result of accounting errors or mismanagement of funds, or the correct amount of interest accrued or owned on the IIM account;
- (5) the total cost to the United States of providing a complete historical accounting of an IIM account may exceed --
  - (A) the current balance of the IIM account;
  - (B) the total sums of money that have passed through the IIM account; and
  - (C) the enforceable liability of the United States for losses from, and interest in, the IIM account;
- (6)(A) the delays in obtaining an accounting and in pursuing accounting claims in the case styled *Cobell v. Norton*, Civil Action No. 96-1285 (RCL) in the United States District Court for the District of Columbia, have created a great hardship on IIM account beneficiaries; and

(B) many beneficiaries and their representatives have indicated that they would rather receive monetary compensation than experience the continued frustration and delay associated with an accounting of transactions and funds in their IIM accounts;

(7) it is appropriate for Congress, taking into consideration the findings under paragraphs (1) through (6), to provide benefits that are reasonably calculated to be fair and appropriate in lieu of performing an accounting of an IIM account, or assuming liability for errors in such an accounting, mismanagement of IIM account funds (including undetermined amounts of interest in IIM accounts, losses in which may never be discovered or quantified if a complete historical accounting cannot be performed), or breach of fiduciary duties with respect to the administration of IIM accounts, in order to transmute claims by the beneficiaries of IIM accounts for undetermined or unquantified accounting losses and interest to a fixed amount to be distributed to the beneficiaries of IIM accounts;

(8) in determining the amount of the payments to be distributed as described in paragraph (7), Congress should take into consideration, in addition to the factors described in paragraphs (1) through (6)--

(A) the risks and costs to IIM account beneficiaries, as well as any delay, associated with the litigation of claims that will be resolved by this title; and

(B) the benefits to IIM account beneficiaries available under this title;

(9) the situation of the Osage Nation is unique because, among other things, income from the mineral estate of the Osage Nation is distributed to individuals through headright interests that belong not only to members of the Osage Nation, but also to members of other Indian tribes, and to non-Indians; and

(10) due to the unique situation of the Osage Nation, the Osage Nation, on its own behalf, has filed various actions in Federal district court and the United States Court of Federal Claims seeking accountings, money damages, and other legal and equitable relief

## **SEC. 102. DEFINITIONS.**

In this title:

- (1) ACCOUNTING CLAIM - The term `accounting claim' means any claim for an historical accounting of a claimant against the United States under the Litigation.
- (2) CLAIMANT - The term `claimant' means any beneficiary of an IIM account (including an heir of such a beneficiary) that was living on the date of enactment of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
- (3) IIM ACCOUNT - The term `IIM account' means an Individual Indian Money account administered by the Bureau of Indian Affairs.
- (4) LITIGATION - The term `Litigation' means the case styled Cobell v. Norton, Civil Action No. 96-1285 (RCL) in the United States District Court for the District of Columbia.
- (5) SECRETARY - The term `Secretary' means the Secretary of the Treasury.
- (6) SETTLEMENT FUND - The term `Settlement Fund' means the fund established by section 103(a).
- (7) SPECIAL MASTER - The term `Special Master' means the special master appointed by the Secretary under section 103(b) to administer the Settlement Fund.

## **SEC. 103. INDIVIDUAL INDIAN ACCOUNTING CLAIM SETTLEMENT FUND.**

(a) Establishment -

- (1) IN GENERAL - There is established in the general fund of the Treasury a fund, to be known as the `Individual Indian Accounting Claim Settlement Fund'.
- (2) INITIAL DEPOSIT - The Secretary shall deposit into the Settlement Fund to carry out this title not less than \$ XX,000,000,000 from funds appropriated under section 1304 of title 31, United States Code. Settlement funds shall be authorized and appropriated in amounts divided evenly over the next three fiscal years and in a manner that would not be scored against any agency, nor should any agency appropriations be diminished to satisfy any

judgment and until payments are made to claimants the funds shall be maintained in an interest-bearing account.

(3) SUBSEQUENT DEPOSIT - The Secretary shall make subsequent deposits to the Settlement Fund that may be necessary to satisfy claims that are not included in the Initial Deposit.

(b) Special Master - As soon as practicable after the date of enactment of this Act, the Secretary shall appoint a Special Master to administer the Settlement Fund in accordance with this title.

(c) Distribution-

(1) IN GENERAL - The Special Master shall use not less than 80 percent of amounts in the Settlement Fund to make payments to claimants in accordance with section 104.

(2) METHOD OF VALUATION AND CONSTITUTIONAL CLAIMS - The Special Master may use not to exceed 12 percent of amounts in the Settlement Fund to make payments to claimants described in --

(A) section 106; or

(B) section 107.

(3) ATTORNEYS' FEES - The Special Master may use not to exceed \$ 100,000,000 of amounts in the Settlement Fund to make payments to claimants for attorneys' fees in accordance with section 108.

(d) Costs of Administration - The Secretary may use not more than 1 percent of amounts in the Settlement Fund to pay the costs of--

(1) administering the Settlement Fund; and

(2) otherwise carrying out this title.

## **SEC. 104. GENERAL DISTRIBUTION.**

(a) Payments to Claimants -

(1) IN GENERAL - Not later than 1 year after the date on which the Secretary publishes in the Federal Register the regulations described in subsection (d), the Special Master shall distribute to each claimant from the Settlement Fund an amount equal to the sum of--

(A) the per capita share of the claimant of 80 percent of the amounts described in section 103(c)(1); and

(B) of 20 percent of the amounts described in section 103(c)(1), the additional share of the claimant, to be determined in accordance with a formula established by the Secretary under subsection (d)(1).

(2) HEIRS OF CLAIMANTS -

(A) IN GENERAL- An heir of a claimant shall receive the entire amount distributed to the claimant under paragraphs (1) and (3).

(B) MULTIPLE HEIRS - If a claimant has more than 1 heir, the amount distributed to the claimant under paragraphs (1) and (3) shall be divided equally among the heirs of the claimant.

(3) RESIDUAL AMOUNTS - After making each distribution required under sections 106, 107, and 108, the Special Master shall distribute to claimants the remainder of the amounts described in paragraphs (2) and (3) of section 103(c), in accordance with paragraph (1)(B).

(b) Requirement for Distribution - The Special Master shall not make a distribution to a claimant under subsection (a) until the claimant executes a waiver and release of accounting claims against the United States in accordance with section 109.

(c) Location of Claimants -

(1) RESPONSIBILITY OF SECRETARY OF THE INTERIOR - The Secretary of the Interior shall provide to the Special Master any information, including IIM account information, that the Special Master determines to be necessary to--

(A) identify any claimant under this title; or

(B) apply a formula established by the Secretary under subsection (d).



(2) CLAIMANTS OF UNKNOWN LOCATION -

(A) IN GENERAL - The Special Master shall deposit in an account, for future distribution, amounts under this title for each claimant who--

(i) is entitled to receive a distribution under this title, as determined by the Special Master; and

(ii) has not been located by the Special Master as of the date on which a distribution is required under subsection (a)(1).

(B) LOCATION OF CLAIMANTS -

(i) RESPONSIBILITY OF SECRETARY OF THE INTERIOR - The Secretary of the Interior shall provide to the Special Master any information and assistance necessary to locate a claimant described in subparagraph (A)(ii).

(ii) CONTRACTS - The Special Master may enter into contracts with an Indian tribe or an organization representing individual Indians in order to locate a claimant described in subparagraph (A)(ii).

(d) Regulations -

(1) IN GENERAL - The Secretary shall promulgate any regulations that the Secretary determines to be necessary to carry out this title, including regulations establishing a formula to determine the share of each claimant of payments under subsection (a)(1).

(2) FACTORS FOR CONSIDERATION - In developing the formula described in paragraph (1), the Secretary shall take into consideration the amount of funds that have passed through the IIM account of each claimant during the period beginning on January 1, 1980, and ending on December 31, 2005, or another period, as the Secretary determines to be appropriate.

## **SEC. 105. CLAIMS RELATING TO SHARE DETERMINATION.**

(a) In General - Subject to subsection (b), any claimant may seek judicial review of the determination of the Special Master with respect to the amount of a share payment of a claimant under section 104(a)(1).

(b) Requirements- A claimant shall file a claim under subsection (a)--

(1) not later than 180 days after the date of receipt of a notice by the claimant under subsection (c); and

(2) in the United States district court for the district in which the claimant resides.

(c) Notice - The Secretary shall provide to each claimant a notice of the right of any claimant to seek judicial review of a determination of the Special Master with respect to the amount of the share payment of the claimant under section 105.

(d) Subsequent Appeals- A claim relating to a determination of a United States district court relating to an appeal under subsection (a) shall be filed only in the United States Court of Appeals for the District of Columbia.

## **SEC. 106. CLAIMS RELATING TO METHOD OF VALUATION.**

(a) In General - Not later than 1 year after the date of enactment of this Act, a claimant may seek judicial review of the method of distribution of a payment to the claimant under section 104(a).

(b) Requirements- A claim under subsection (a)--

(1) shall not be filed as part of a class action claim against any party; and

(2) shall be filed only in the United States Court of Federal Claims.

(c) Available Amounts-

(1) IN GENERAL - The Special Master shall use only amounts described in section 103(c)(2)(A) to satisfy an award under a claim under this section.

(2) PAYMENTS TO CLAIMANTS - A claimant that files a claim under this subsection shall not be eligible to receive a distribution under section 104(a).

(d) Effect of Claim- The filing of a claim under this section shall be considered to be a waiver by the claimant of any right to an award under section 104.

## **SEC. 107. CLAIMS RELATING TO CONSTITUTIONALITY.**

(a) In General - Any claimant may seek judicial review in the United States District Court for the District of Columbia of the constitutionality of the application of this title to an individual claimant.

(b) Procedure-

(1) JUDICIAL PANEL - A claim under this section shall be determined by a panel of 3 judges, to be appointed by the chief judge of the United States District Court for the District of Columbia.

(2) CONSOLIDATION OF CLAIMS -

(A) IN GENERAL - The judicial panel may consolidate claims under this section, as the judicial panel determines to be appropriate.

(B) PROHIBITION OF CLASS ACTION CASES - A claim under this section shall not be filed as part of a class action claim against any party.

(3) DETERMINATION - The judicial panel may award a claimant such relief as the judicial panel determines to be appropriate, including monetary compensation.

(c) Available Amounts-

(1) IN GENERAL - The Special Master shall use only amounts described in section 103(c)(2)(B) to satisfy an award under a claim under this section.

(2) PAYMENTS TO CLAIMANTS - A claimant that files a claim under this subsection shall not be eligible to receive a distribution under section 104(a).

(d) Effect of Claim- The filing of a claim under this section shall be considered to be a waiver by the claimant of any right to an award under section 104.

## **SEC. 108. ATTORNEYS' FEES.**

(a) In General - The Special Master may use amounts described in section 103(c)(3) to make payments to claimants for costs and attorneys' fees incurred under the Litigation before the date of enactment of this Act, or in connection with a claim under section 104, at a rate not to exceed \$ 1,000 per hour.

(b) Requirements-

(1) IN GENERAL - The Special Master may make a payment under subsection (a) only if, as of the date on which the Special Master makes the payment, the applicable costs and attorneys' fees have not been paid by the United States pursuant to a court order.

(2) ACTION BY ATTORNEYS - To receive a payment under subsection (a), an attorney of the claimant shall submit to the Special Master a written claim for costs or fees under the Litigation.

## **SEC. 109. WAIVER AND RELEASE OF CLAIMS.**

(a) In General - In order to receive an award under this title, a claimant shall execute and submit to the Special Master a waiver and release of claims under this section.

(b) Contents- A waiver and release under subsection (a) shall contain a statement that the claimant waives and releases the United States (including any officer, official, employee, or contractor of the United States) from any legal or equitable claim under Federal, State, or other law (including common law) relating to any accounting of funds in the IIM account of the claimant on or before the date of enactment of this Act.

## **SEC. 110. EFFECT OF TITLE.**

(a) Substitution of Benefits-

(1) IN GENERAL - The benefits provided under this title shall be considered to be provided in lieu of any claims under Federal, State, or other law originating before the date of enactment of this Act for--

(A) losses as a result of accounting errors relating to funds in an IIM account;

(B) mismanagement of funds in an IIM account; or

(C) interest accrued or owed in connection with funds in an IIM account.

(2) LIMITATION OF CLAIMS - Except as provided in this title, and notwithstanding any other provision of law, a claimant shall not maintain an action in any Federal,

State, or other court for an accounting claim originating before the date of enactment of this Act.

(3) JURISDICTION OF COURTS -

(A) IN GENERAL - Except as otherwise provided in this title, no court shall have jurisdiction over a claim filed by an individual or group for the historical accounting of funds in an IIM account on or before the date of enactment of this Act, including any such claim that is pending on the date of enactment of this Act.

(B) LIMITATION - This paragraph does not prevent a court from ordering an accounting in connection with an action relating to the mismanagement of trust resources that are not funds in an IIM account on or before the date of enactment of this Act.

(b) Acceptance as Waiver - The acceptance by a claimant of a benefit under this title shall be considered to be a waiver by the claimant of any accounting claim that the claimant has or may have relating to the IIM account of the claimant.

(c) Receipt of Payments Have No Impact on Benefits Under Other Federal Programs- The receipt of a payment by a claimant under this title shall not be--

(1) subject to Federal or State income tax; or

(2) treated as benefits or otherwise taken into account in determining the eligibility of the claimant for, or the amount of benefits under, any other Federal program, including the social security program, the medicare program, the medicaid program, the State children's health insurance program, the food stamp program, or the Temporary Assistance for Needy Families program.

(d) Certain Claims- Nothing in this title precludes any court from granting any legal or equitable relief in an action by an Indian tribe or Indian nation against the United States, or an officer of the United States, filed or pending on or before the date of enactment of this Act, seeking an accounting, money damages, or any other relief relating to a tribal trust account or trust asset or resource.

## **TITLE II--INDIAN TRUST ASSET MANAGEMENT POLICY REVIEW COMMISSION**

## SEC. 201. ESTABLISHMENT.

There is established a commission, to be known as the `Indian Trust Asset Management Policy Review Commission,' (referred to in this title as the `Commission'), for the purposes of--

- (1) reviewing trust asset management laws (including regulations) in existence on the date of enactment of this Act governing the management and administration of individual Indian and Indian tribal trust assets;
- (2) reviewing the management and administration practices of the Department of the Interior with respect to individual Indian and Indian tribal trust assets; and
- (3) making recommendations to the Secretary of the Interior and Congress for improving those laws and practices.

## SEC. 202. MEMBERSHIP.

(a) In General - The Commission shall be composed of **7** members, of whom--

- (1) **3** shall be appointed by the President;
- (2) **1** shall be appointed by the Majority Leader of the Senate;
- (3) **1** shall be appointed by the Minority Leader of the Senate;
- (4) **1** shall be appointed by the Speaker of the House of Representatives; and
- (5) **1** shall be appointed by the Minority Leader of the House of Representatives.

(b) Qualifications- The membership of the Commission shall include--

- (1) at least **3** members who are representatives of federally recognized Indian tribes with reservation land or other trust land that is managed for--

(A) grazing;

(B) fishing; or

(C) crop, timber, mineral, or other resource production purposes;

- (2) at least 1 member (including any member described in paragraph (1)) who is or has been the beneficial owner of an individual Indian monies account; and

- (3) at least **3** members who have experience in—

- (A) Indian trust resource (excluding a financial resource) management;
- (B) fiduciary investment management;
- (C) financial asset management; and
- (D) Federal law and policy relating to Indians.

(4) not more than 4 members of the commission shall be members of or registered to vote with the same political party.

(c) Date of Appointments-

(1) IN GENERAL - The appointment of a member of the Commission shall be made not later than 90 days after the date of enactment of this Act.

(2) FAILURES TO APPOINT - A failure to make an appointment in accordance with paragraph (1) shall not affect the powers or duties of the Commission if sufficient members are appointed to establish a quorum.

(d) Term; Vacancies-

(1) TERM - A member shall be appointed for the life of the Commission.

(2) VACANCIES - A vacancy on the Commission--

(A) shall not affect the powers or duties of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

## **SEC. 203. MEETINGS AND PROCEDURES.**

(a) Initial Meeting - Not later than 30 days after at least 5 of the 7 members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission to--

(1) elect a Chairperson; and

(2) establish procedures for the conduct of business of the Commission, including public hearings.

(b) Subsequent Meetings - The Commission shall meet at the call of the Chairperson.

(c) Quorum - 5 members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(d) Chairperson - The Commission shall elect a Chairperson from among the members of the Commission.

## **SEC. 204. DUTIES.**

(a) Reviews and Assessments - The Commission shall review and assess--

(1) Federal laws (including regulations) applicable or relating to the management and administration of Indian trust assets; and

(2) the practices of the Department of the Interior relating to the management and administration of Indian trust assets, including review and assessment with respect to consolidating responsibility, decision-making and supervision of trust functions and non-trust functions at the local field office level.

(3) other public trust policies similar in nature to Indian trusts and land status and analyze them for beneficial practices that can be included in recommendations for the improvement of the management and administration of Indian trust funds and assets by the Department of the Interior

(b) Consultation - In conducting the reviews and assessments under subsection (a), the Commission shall consult with--

(1) the Secretary of the Interior;

(2) federally recognized Indian tribes; and

(3) representatives of the interests of individual owners of Indian trust assets.

(c) Recommendations- After conducting the reviews and assessments under subsection (a), the Commission shall develop recommendations with respect to--

(1) changes to Federal law that would improve the management and administration of Indian trust assets by the Secretary of the Interior;

(2) changes to Indian trust asset management and administration practices that would--

(A) better protect and conserve Indian trust assets;

(B) improve the return on those assets to individual Indian and Indian tribal beneficiaries; or



(C) improve the level of security of individual Indian and Indian tribal money account data and assets; and

(3) proposed Indian trust asset management standards that are consistent with any Federal law that is otherwise applicable to the management and administration of the assets.

(d) Report - Not later than 18 months after the date on which the Commission holds the initial meeting, the Commission shall submit to the Committee on Indian Affairs of the Senate, the Committee on Resources of the House of Representatives, and the Secretary of the Interior a report that includes--

(1) an overview and the results of the reviews and assessments under subsection (a); and

(2) any recommendations of the Commission under subsection (c).

## **SEC. 205. POWERS.**

(a) Hearings - The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Chairperson determines to be appropriate to carry out this title.

(b) Information From Federal Agencies-

(1) IN GENERAL - The Commission may secure directly from a Federal agency such information as the Chairperson determines to be necessary to carry out this title.

(2) PROVISION OF INFORMATION - On request of the Chairperson, the head of a Federal agency shall provide information to the Commission.

(c) Access to Personnel- For purposes of carrying out this title, the Commission shall have reasonable access to staff responsible for Indian trust asset management and administration of--

(1) the Department of the Interior;

(2) the Department of the Treasury; and

(3) the Department of Justice.

(d) Postal Services - The Commission may use the United States mail in the same manner and under the same conditions as other Federal agencies.

(e) Gifts - The Commission may accept, use, and dispose of gifts or donations of services or property to the same extent and under the same conditions as other Federal agencies.

## **SEC. 206. COMMISSION PERSONNEL MATTERS.**

(a) Compensation of Members -

(1) NON-FEDERAL EMPLOYEES - A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) FEDERAL EMPLOYEES - A member of the Commission who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(b) Travel Expenses - A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from home or regular place of business of the member in the performance of the duties of the Commission.

(c) Staff -

(1) IN GENERAL - The Chairperson may, without regard to the civil services laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(2) CONFIRMATION OF EXECUTIVE DIRECTOR - The employment of an executive director shall be subject to confirmation by the Commission.

(3) COMPENSATION -

(A) IN GENERAL - Except as provided in subparagraph (B), the Chairperson may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY - The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

## **SEC. 207. EXEMPTION FROM FACa.**

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission if all hearings of the Commission are held open to the public.

## **SEC. 208. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this title.

## **SEC. 209. TERMINATION OF COMMISSION.**

The Commission and the authority of the Commission under this title shall terminate on the date that is 2 years after the date on which the Commission holds the initial meeting of the Commission.

## **SEC. 210. TRIBAL TRUST REFORM TASK FORCE.**

The Secretary shall establish and appoint the Tribal Trust Reform Task Force within sixty days of the termination of the Commission. The Tribal Trust Reform Task Force shall be appointed by the Secretary and shall consist of the Under

Secretary for Indian Affairs and 12 members representing federally recognized tribes on a regional basis to be distributed evenly from the geographical make up of Indian Country. The Task Force may at the discretion of the Secretary terminate on the date that is 4 years after the date on which the Task Force holds the initial meeting. The Secretary may designate the Under Secretary for Indian Affairs as the Chair and the only Department representative as a member of the Task Force. The Secretary may appoint any members of the Indian Trust Asset Management Policy Review Commission who may fulfill the purpose of the Task Force and meet the geographical requirements for the membership of the Task Force.

The Task Force shall:

(1) serve as an advisor to the Department for implementing Trust Reform recommendation of the Commission; and,

(2) assist the Department in evaluating the processes of implementing Trust Reform policies and directives; and,

(3) provide recommendations that may improve Trust Reform management on an ongoing basis; and,

(4) assist the Department in the processes of soliciting evaluating and incorporating Tribal input into Department actions; and

(5) provide reports and make recommendations relating to the Departments progress in developing and implementing activities to improve the management and administration of the federal trust responsibility. The reports may be submitted to the appropriate committees of the House and Senate every six months.

## **TITLE III--INDIAN TRUST ASSET MANAGEMENT DEMONSTRATION PROJECT ACT**

### **SEC. 301. SHORT TITLE.**

This title may be cited as the `Indian Trust Asset Management Demonstration Project Act of 2005'.

### **SEC. 302. DEFINITIONS.**

In this title:

(1) PROJECT - The term `Project' means the Indian trust asset management demonstration project established under section 303(a).

(2) OTHER INDIAN TRIBE - The term `other Indian tribe' means an Indian tribe that--

(A) is federally recognized;

(B) is not a section 131 Indian tribe; and

(C) submits an application under section 303(c).

(3) SECRETARY - The term `Secretary' means the Secretary of the Interior.

(4) SECTION 131 INDIAN TRIBE - The term `section 131 Indian tribe' means any Indian tribe that is participating in the demonstration project under section 131 of title III, division E of the Consolidated Appropriations Act, 2005 (Public Law 108-447; 118 Stat. 2809).

### **SEC. 303. ESTABLISHMENT OF DEMONSTRATION PROJECT; SELECTION OF PARTICIPATING INDIAN TRIBES.**

(a) In General - The Secretary shall establish and carry out an Indian trust asset management demonstration project, in accordance with this title.

(b) Selection of Participating Indian Tribes-

(1) SECTION 131 INDIAN TRIBES - A section 131 Indian tribe shall be eligible to participate in the Project if the section 131 Indian tribe submits to the Secretary an application under subsection (c).

(2) OTHER TRIBES -

(A) IN GENERAL - Any other Indian tribe shall be eligible to participate in the Project if--

(i) the other Indian tribe submits to the Secretary an application under subsection (c); and

(ii) the Secretary approves the application of the other Indian tribe.

(B) LIMITATION -

(i) 30 OR FEWER APPLICANTS - If 30 or fewer other Indian tribes submit applications under subsection (c), each of the other Indian tribes shall be eligible to participate in the Project.

(ii) MORE THAN 30 APPLICANTS -

(I) IN GENERAL - If more than 30 other Indian tribes submit applications under subsection (c), the Secretary shall select 30 other Indian tribes to participate in the Project.

(II) PREFERENCE - In selecting other Indian tribes under subclause (I), the Secretary shall give preference to other Indian tribes the applications of which were first received by the Secretary.

(3) NOTICE-

(A) IN GENERAL - The Secretary shall provide a written notice to each Indian tribe selected to participate in the Project.

(B) CONTENTS - A notice under subparagraph (A) shall include--

(i) a statement that the application of the Indian tribe has been approved by the Secretary; and

(ii) a requirement that the Indian tribe shall submit to the Secretary a proposed Indian trust asset management plan in accordance with section 304.

(c) Application -

(1) IN GENERAL - To be eligible to participate in the Project, an Indian tribe shall submit to the Secretary a written application in accordance with paragraph (2).

(2) REQUIREMENTS - The Secretary shall take into consideration an application under this subsection only if the application--

(A) includes a copy of a resolution or other appropriate action by the governing body of the Indian tribe, as determined by the Secretary, in support of or authorizing the application;

(B) is received by the Secretary by the date that is 180 days after the date of enactment of this Act; and

(C) states that the Indian tribe is requesting to participate in the Project.

(d) Duration - The Project shall remain in effect for a period of 8 years after the date of enactment of this Act.

#### (E) REPORT --

##### (1) IN GENERAL --

(A) Report Demonstration Project Progress Implementation and Recommended Legislation  
- Not later than one year after the effective date of this title, the Under Secretary, in consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, shall submit to Congress a report on the progress of the implementation of and processing of the demonstration projects as a result of this Act. Additionally the Secretary may at that time submit any recommendations relating to improving the implementation of this section. The report shall be submitted annually thereafter along with the Under Secretary's testimony before the appropriate committees of Congress on the President's budget request.

## **SEC. 304. INDIAN TRUST ASSET MANAGEMENT PLAN.**

(a) Proposed Plan -

(1) SUBMISSION -

(A) IN GENERAL - Not later than 120 days after the date on which an Indian tribe receives a notice from the Secretary under section 303(b)(3), the Indian tribe

shall submit to the Secretary a proposed Indian trust asset management plan in accordance with paragraph (2).

(B) TIME LIMITATIONS -

(i) IN GENERAL - Except as provided in clause (ii), any Indian tribe that fails to submit the Indian trust asset management plan of the Indian tribe by the date specified in subparagraph (A) shall no longer be eligible to participate in the Project.

(ii) EXTENSION - The Secretary shall grant an extension of not more than 60 days to an Indian tribe if the Indian tribe submits a written request for such an extension before the date described in subparagraph (A).

(2) CONTENTS - A proposed Indian trust asset management plan shall include provisions that --

(A) identify the trust assets that will be subject to the plan, including financial and nonfinancial trust assets;

(B) establish trust asset management objectives and priorities for Indian trust assets that are located within the reservation, or otherwise subject to the jurisdiction, of the Indian tribe;

(C) allocate trust asset management funding that is available for the Indian trust assets subject to the plan in order to meet the trust asset management objectives and priorities;

(D) if the Indian tribe has contracted or compacted functions or activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) relating to the management of trust assets--

(i) identify the functions or activities that are being performed by the Indian tribe under the contracts or compacts; and

(ii) describe the proposed management systems, practices, and procedures that the Indian tribe will follow; and



(E) establish procedures for nonbinding mediation or resolution of any dispute between the Indian tribe and the United States relating to the trust asset management plan.

(3) AUTHORITY OF INDIAN TRIBES TO DEVELOP SYSTEMS, PRACTICES, AND PROCEDURES - For purposes of preparing and carrying out a management plan under this section, an Indian tribe that has compacted or contracted activities or functions under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), for purposes of carrying out the activities or functions, may develop and carry out trust asset management systems, practices, and procedures that differ from any such systems, practices, and procedures used by the Secretary in managing the trust assets if the systems, practices, and procedures of the Indian tribe meet the requirements of the laws, standards, and responsibilities described in subsection (c).

(4) TECHNICAL ASSISTANCE AND INFORMATION - The Secretary shall provide to an Indian tribe any technical assistance and information, including budgetary information, that the Indian tribe determines to be necessary for preparation of a proposed plan on receipt of a written request from the Indian tribe. The Secretary shall develop a program that encourages the eligible tribes to utilize department expertise for proposal development to advance their resource needs and lessen the need for utilizing the administrative or district court appeals process.

(b) Approval and Disapproval of Proposed Plans -

(1) APPROVAL -

(A) IN GENERAL - Not later than 90 days after the date on which an Indian tribe submits a proposed Indian trust asset management plan under subsection (a), the Secretary shall approve or disapprove the proposed plan.

(B) REQUIREMENTS FOR DISAPPROVAL - The Secretary shall approve a proposed plan unless the Secretary determines that--

(i) the proposed plan fails to address a requirement under subsection (a)(2);

~~(ii) the proposed plan includes 1 or more provisions that are inconsistent with subsection (e); or~~

(ii) ~~(iii)~~ the cost of implementing the proposed plan exceeds the amount of funding available for the management of trust assets that would be subject to the proposed plan.

(2) ACTION ON DISAPPROVAL -

(A) NOTICE - If the Secretary disapproves a proposed plan under paragraph (1)(B), the Secretary shall provide:

(i) ~~(to the Indian tribe)~~ a written notice of the disapproval, including any reason why the proposed plan was disapproved.

(ii) identification of the technical assistance available to the tribe should it wish to resubmit the plan pursuant to subparagraph (B).

(iii) the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, except that the Indian tribe may, in lieu of filing such appeal, directly proceed to initiate an action in a federal district court pursuant to subparagraph (B)(4) of this section.

(B) ACTION BY TRIBES - An Indian tribe the proposed plan of which is disapproved under paragraph (1)(B) may resubmit an amended proposed plan not later than 90 days after the date on which the Indian tribe receives the notice under subparagraph (A).

(3) FAILURE TO APPROVE OR DISAPPROVE - If the Secretary fails to disapprove a proposed plan within 90 days (or within any agreed to extension) it is deemed approve or disapprove a proposed plan in accordance with paragraph (1), the plan shall be considered to be disapproved under clauses (i) and (ii) of paragraph (1)(B). At any time during the review period the Secretary may approve the proposal and award the requested contract.

~~(4) (JUDICIAL REVIEW—An Indian tribe may seek judicial review of the determination of the Secretary in accordance with subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the 'Administrative Procedure Act') if—~~

~~(A) the Secretary disapproves the proposed plan of the Indian tribe under paragraph (1) or (3); and~~

~~(B) the Indian tribe has exhausted any other administrative remedy available to the Indian tribe.)~~ Civil Actions –

(A) CIVIL ACTIONS; CONCURRENT JURISDICTION, RELIEF – The United States district courts shall have original jurisdiction over any civil action or claim against the Secretary arising under this title and, subject to the provisions of subsection (D) of this section and concurrent with the United State Court of Claims, over any civil action or claim against the Secretary for money damages arising under agreements authorized by this subchapter. In an action brought under this paragraph, the district courts may order appropriate relief including, money damages, injunctive relief against any action by an officer of the United States or any agency thereof contrary to this title or regulations promulgated thereunder, or mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a duty under this subchapter or regulations promulgated hereunder (including immediate injunctive relief to reverse the Secretary's declination of a plan, contract, compact, or funding agreement under this title, or to compel the Secretary to award and fund an approved plan, contract, compact or agreement).

(B) REVISION OF AGREEMENTS – The Secretary shall not revise or amend a plan, agreement, contract or compact under this title without the tribe's consent.

(C) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS – Section 504 of title 5, and section 2412 of title 28 shall apply to administrative appeals filed pursuant to this title.

(D) APPLICATION OF CONTRACT DISPUTES ACT – The Contract Disputes Act (Public Law 95-563, Act of November 1, 1978; 92 Stat. 2383, as amended) shall apply to disputes arising under this title, except that all administrative appeals relating to such disputes shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).

(E) BURDEN OF PROOF – With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the validity of the grounds for rejecting the tribe’s proposed plan (or provision thereof) under subsection (b) of this section.

(c) Applicable Laws; Standards; Trust Responsibility-

(1) APPLICABLE LAWS - An Indian trust asset management plan, and any activity carried out under the plan, shall not be approved unless the proposed plan is consistent with --

(A) all Federal treaties, statutes, regulations, Executive orders, and court decisions that are applicable to the trust assets, or the management of the trust assets, identified in the plan; and

(B) all tribal laws that are applicable to the trust assets, or the management of trust assets, identified in the plan, except to the extent that the laws are inconsistent with the treaties, statutes, regulations, Executive orders, and court decisions referred to in subparagraph (A).

(2) STANDARDS - Subject to the laws referred to in paragraph (1)(A), an Indian trust asset management plan shall not be approved unless the Secretary determines that the plan will --

(A) protect trust assets from loss, waste, and unlawful alienation;

(B) promote the interests of the beneficial owner of the trust asset;

(C) conform, to the maximum extent practicable, to the preferred use of the trust asset by the beneficial owner, unless the use is inconsistent with a treaty, statute, regulation, Executive order, or court decision referred to in paragraph (1)(A);

(D) protect any applicable treaty-based fishing, hunting and gathering, and similar rights relating to the use, access, or enjoyment of a trust asset; and

(E) require that any activity carried out under the plan be carried out in good faith and with loyalty to the beneficial owner of the trust asset.

(F) provides, consistent with the laws of the recognized tribal government for the reservation encompassed by the trust asset management plan, a due process system for the

consideration and determination or mitigation of any adverse impact on the use of the interest held by an allottee, or any successor in interest to an allottee, as a result of the implementation of the trust asset management plan.

(3) TRUST RESPONSIBILITY - An Indian trust asset management plan shall not be approved unless the Secretary determines that the plan is consistent with the trust responsibility of the United States to the Indian tribe and individual Indians.

(d) Termination of Plan-

(1) IN GENERAL - An Indian tribe may terminate an Indian trust asset management plan on any date after the date on which a proposed Indian trust asset management plan is approved by providing to the Secretary--

(A) a notice of the intent of the Indian tribe to terminate the plan; and

(B) a resolution of the governing body of the Indian tribe authorizing the termination of the plan.

(2) EFFECTIVE DATE - A termination of an Indian trust asset management plan under paragraph (1) takes effect on October 1 of the first fiscal year following the date on which a notice is provided to the Secretary under paragraph (1)(A).

## **SEC. 305. EFFECT OF TITLE.**

(a) Liability - Nothing in this title, or a trust asset management plan approved under section 304, shall independently diminish, increase, create, or otherwise affect the liability of the United States or an Indian tribe participating in the Project for any loss resulting from the management of an Indian trust asset under an Indian trust asset management plan.

(b) Effect on Other Laws - Nothing in this title amends or otherwise affects the application of any treaty, statute, regulation, Executive order, or court decision that is applicable to Indian trust assets or the management or administration of Indian trust assets, including the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(c) Trust Responsibility - Nothing in this title diminishes or otherwise affects the trust responsibility of the United States to Indian tribes and individual Indians.

## **TITLE IV--FRACTIONAL INTEREST PURCHASE AND CONSOLIDATION PROGRAM**

### **SEC. 401. FRACTIONAL INTEREST PROGRAM.**

Section 213 of the Indian Land Consolidation Act (25 U.S.C. 2212) is amended--

(1) by redesignating subsection (d) as subsection (h); and

(2) by inserting after subsection (c) the following:

(d) Purchase of Interests in Fractionated Indian Land -

(1) INCENTIVES - In acquiring an interest under this section in any parcel of land that includes undivided trust or restricted interests owned by not less than 20 separate individuals, as determined by the Secretary, the Secretary may include in the offered purchase price for the interest, in addition to fair market value, an amount not less than \$100 and not to exceed \$350, as an incentive for the owner to sell the interest to the Secretary.

(2) SALE OF ALL TRUST OR RESTRICTED INTERESTS - If an individual agrees to sell to the Secretary all trust or restricted interests owned by the individual, the Secretary may include in the offered purchase price, in addition to fair market value and the incentive described in paragraph (1), an amount not to exceed \$2,000, as the Secretary determines to be appropriate, taking into consideration the avoided costs to the United States of probating the estate of the individual or an heir of the individual.

(e) Certain Parcels of Highly Fractionated Indian Land-

(1) DEFINITION OF OFFEREE - In this subsection, the term `offeree' does not include the Indian tribe that has jurisdiction over a parcel of land for which an offer is made.

(2) OFFER TO PURCHASE -

(A) IN GENERAL - If the Secretary determines that a tract of land consists of not less than 200 separate undivided trust or restricted interests, the Secretary may offer to purchase the interests in the tract, in accordance with this subsection, for an amount equal to the sum of--

- (i) the fair market value of the interests; and
- (ii) an additional amount, to be determined by the Secretary, not less than triple the fair market value of the interest.

(B) REQUIREMENT - The Secretary shall make an offer under subparagraph (A) not later than 3 days before the date on which the Secretary mails a notice of the offer to the offeree under paragraph (3).

(3) NOTICE OF OFFER -

(A) IN GENERAL - The Secretary shall provide to an offeree, by certified mail to the last known address of the offeree, a notice of any offer to purchase land under this subsection.

` (B) INCLUSIONS- A notice under subparagraph (A) shall include in plain language, as determined by the Secretary--

- ` (i) the date on which the offer was made;
- ` (ii) the name of the offeree;
- ` (iii) the location of the tract of land containing the interest that is the subject of the offer;
- ` (iv) the size of the interest of the offeree, expressed in terms of a fraction or a percentage of the tract of land described in clause (iii);
- ` (v) the fair market value of the tract of land described in clause (iii);
- ` (vi) the fair market value of the interest of the offeree;
- ` (vii) the amount offered for the interest in addition to fair market value under paragraph (2)(A)(ii);
- ` (viii) a statement that the offeree shall be considered to have accepted the offer for the amount stated in the notice unless a notice of rejection form is deposited in

the United States mail not later than 90 days after the date on which the offer is received; and

` (ix) a self-addressed, postage pre-paid notice of rejection form.

` (4) TREATMENT OF OFFER -

` (A) IN GENERAL - An offer made under this subsection shall be considered to be accepted by the offeree if--

` (i) the certified mail receipt for the offer is signed by the offeree; and

` (ii) the notice of rejection form described in paragraph (3)(B)(ix) is not deposited in the United States mail by the date that is 90 days after the date on which the offer is received.

` (B) REJECTION - An offer made under this subsection shall be considered to be rejected by the offeree if--

` (i) the notice of rejection form described in paragraph (3)(B)(ix) is deposited in the United States mail by the date that is 90 days after the date on which the offer is received; or

` (ii) the certified mail receipt for the offer is returned to the Secretary unsigned by the offeree.

` (5) WITHDRAWAL OF ACCEPTANCE; NOTICE -

` (A) WITHDRAWAL OF ACCEPTANCE - A person that is considered to have accepted an offer under paragraph (4)(A) may withdraw the acceptance by depositing in the United States mail a notice of withdrawal of acceptance form by the date that is 30 days after the date of receipt of the notice under subparagraph (B).

` (B) NOTICE - The Secretary shall provide to any person that is considered to have accepted an offer under paragraph (4)(A), by certified mail, restricted delivery, to the last known address of the person, a preaddressed, postage prepaid withdrawal of acceptance form and a notice stating that--

` (i) the offer made to the person is considered to be accepted; and



` (ii) the person has the right to withdraw the acceptance by depositing in the United States mail the notice of withdrawal of acceptance form by the date that is 30 days after the date on which the notice was delivered to the person.

` (6) NOTICE OF ACCEPTANCE AND RIGHT TO APPEAL - The Secretary shall provide to any person that has been served with a notice under paragraph (5)(B) and fails to withdraw the acceptance of the offer in accordance with paragraph (5)(A), by first class mail to the last known address of the person, a notice stating that--

` (A) the offer made to the person is considered to be accepted and not timely withdrawn; and

` (B) after exhausting all administrative remedies, the person may appeal any determination of the Secretary in accordance with paragraph (7).

` (7) JUDICIAL REVIEW - A person described in paragraph (6) may appeal any determination of the Secretary with respect to--

` (A) the number of owners of undivided interests in a tract of land required under paragraph (2);

` (B) the fair market value of a tract of land or interest in land;

` (C) the date on which a notice of rejection form was deposited in the United States mail under paragraph (4)(B)(i); or

` (D) the date on which a notice of withdrawal of acceptance form was deposited in the United States mail under paragraph (5)(A).

` (f) Offer to Settle Claims Against the United States-

` (1) IN GENERAL - The Secretary may make an offer to any individual owner (not including an Indian tribe) of a trust or restricted interest in a tract of land to settle any claim that the owner may have against the United States relating to the specific tract of land of which the interest is a part (not including a claim for an accounting described in title I of the Indian Trust Reform Act of 2005).

` (2) REQUIREMENTS - An offer to settle claims under this subsection shall--

` (A) be in writing;

` (B) be delivered to an individual owner by the Secretary in person or through first class mail; and

` (C) include --

` (i) the name of the individual owner;

` (ii) a description of the tract of land to which the offer relates;

` (iii) the amount offered to settle a claim of the individual owner;

` (iv) the manner and date by which the individual owner shall accept the offer;

` (v) a statement that the individual owner is under no obligation to accept the offer;

` (vi) a statement that the individual owner has the right to consult an attorney or other advisor before accepting the offer;

` (vii) a statement that acceptance of the offer by the individual owner will result in a full and final settlement of all claims, known and unknown, of the individual owner (including the heirs and assigns of the individual owner) against the United States relating to the tract of land identified in the offer; and

` (viii) a statement that the settlement proposed by the offer does not cover any claim for an accounting described in title I of the Indian Trust Reform Act of 2005.

` (3) ACCEPTANCE - No acceptance of an offer under this subsection shall be valid or binding on the individual owner unless the acceptance--

` (A) is in writing;

` (B) is signed by the individual owner;

` (C) is notarized; and

` (D) is attached to a copy of, or contains all material terms of, the offer to which the acceptance corresponds.

` (4) LIMITATION - No offer to purchase an interest under this section or any other provision of law shall be conditioned on the acceptance of an offer to settle a claim under this subsection.

` (5) OTHER LAWS - The authority of the Secretary to settle claims under this subsection shall be in addition to, and not in lieu of, the authority of the Secretary to settle claims under any other provision of Federal law.

` (g) Borrowing From Treasury -

` (1) ISSUANCE OF OBLIGATIONS -

` (A) IN GENERAL - To the extent approved in annual appropriations Acts, the Secretary may issue to the Secretary of the Treasury obligations in such amounts as the Secretary determines to be necessary to acquire interests under this Act, subject to approval of the Secretary of the Treasury, and bearing interest at a rate to be determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities to the obligations.

` (B) LIMITATION - The aggregate amount of obligations under subparagraph (A) outstanding at any time shall not exceed \$ 2,000,000,000.

` (2) FORMS AND DENOMINATIONS - The obligations issued under paragraph (1) shall be in such forms and denominations, and subject to such other terms and conditions, as the Secretary of the Treasury may prescribe.

` (3) REPAYMENT -

` (A) IN GENERAL - Revenues derived from land restored to the Tribe under this Act shall be used by the Secretary to pay the principal and interest on the obligations issued under paragraph (1).

` (B) ASSURANCE OF REPAYMENT - The Secretary shall ensure, to the maximum extent possible, that the revenues described in subparagraph (A) provide reasonable assurance of repayment of the obligations issued under paragraph (1).

` (4) AUTHORIZATION OF APPROPRIATIONS - There are authorized to be appropriated to the Secretary for each fiscal year beginning after the date of enactment of this subsection such sums as are necessary to cover any difference between--

` (A) the total amount of repayments of principal and interest on obligations issued to the Secretary of the Treasury under paragraph (1) during the previous fiscal year; and

` (B) the total amount of repayments described in subparagraph (A) that were contractually required to be made to the Secretary of the Treasury during that fiscal year.

` (h) Receipt of Payments Have No Impact on Benefits Under Other Federal Programs - The receipt of a payment by an offeree under this title shall not be--

` (1) subject to Federal or State income tax; or

` (2) treated as benefits or otherwise taken into account in determining the eligibility of the offeree for, or the amount of benefits under, any other Federal program, including the social security program, the medicare program, the medicaid program, the State children's health insurance program, the food stamp program, or the Temporary Assistance for Needy Families program.'.

## **TITLE V--RESTRUCTURING BUREAU OF INDIAN AFFAIRS AND OFFICE OF SPECIAL TRUSTEE**

### **SEC. 501. PURPOSE.**

The purpose of this title is to ensure a more effective and accountable administration of duties of the Secretary of the Interior with respect to providing services and programs to Indians and Indian tribes, including the management of Indian trust resources.

### **SEC. 502. DEFINITIONS.**

In this title:

(1) BUREAU - The term `Bureau' means the Bureau of Indian Affairs.

(2) OFFICE - The term `Office' means the Office of Trust Reform Implementation and Oversight referred to in section 503(c).

(3) SECRETARY - The term `Secretary' means the Secretary of the Interior.

(4) UNDER SECRETARY - The term `Under Secretary' means the individual appointed to the position of Under Secretary for Indian Affairs, established by section 503(a).

## **SEC. 503. UNDER SECRETARY FOR INDIAN AFFAIRS.**

(a) Establishment of Position - There is established in the Department of the Interior the position of Under Secretary for Indian Affairs, who shall report directly to the Secretary.

(b) Appointment -

(1) IN GENERAL - Except as provided in paragraph (2), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) EXCEPTION - The officer serving as the Assistant Secretary for Indian Affairs on the date of enactment of this Act may assume the position of Under Secretary without appointment under paragraph (1) if--

(A) the officer was appointed as Assistant Secretary for Indian Affairs by the President by and with the advice and consent of the Senate; and

(B) not later than 180 days after the date of enactment of this Act, the Secretary approves the assumption.

(c) Duties - In addition to the duties transferred to the Under Secretary under sections 504 and 505, the Under Secretary, acting through an Office of Trust Reform Implementation and Oversight, shall--

(1) carry out any activity relating to trust fund accounts and trust resource management of the Bureau ~~(except any activity carried out under the Office of the Special Trustee for American Indians before the date on which the Office of the Special Trustee is abolished)~~, in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.);

(2) develop and maintain an inventory of Indian trust assets and resources;

(3) coordinate with the Special Trustee for American Indians to ensure an orderly transition of the functions of the Special Trustee under section 505;

(4) supervise any activity carried out by the Department of the Interior, including-

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(A) to the extent that the activities relate to Indian affairs, activities carried out by--

(i) the Commissioner of Reclamation;

(ii) the Director of the Bureau of Land Management; and

(iii) the Director of the Minerals Management Service; and

(B) intergovernmental relations between the Bureau and Indian tribal governments;

(5) to the maximum extent practicable, coordinate activities and policies of the Bureau with activities and policies of--

(A) the Bureau of Reclamation;

(B) the Bureau of Land Management; and

(C) the Minerals Management Service;

(i) and these departments shall coordinate their activities and policies with the Under Secretary so as to mitigate potential impacts on the trust responsibilities of the department and United States relating to federally recognized Indian tribes and their resources.

(6) provide for regular consultation with Indians and Indian tribes that own interests in trust resources and trust fund accounts;

(7) manage and administer Indian trust resources in accordance with any applicable Federal law;

(8) take steps to protect the security of data relating to individual Indian and Indian tribal trust accounts; and

(9) take any other measure the Under Secretary determines to be necessary with respect to Indian affairs.

(10) after the appointment of the Under Secretary, the Under Secretary shall join with the Special Trustee to develop a plan for transition of all authority and activity of the Office of

Special Trustee to the Under Secretary and submit the plan to the appropriate committees of Congress as an element of the transition report in Sec. 504 subsection (m). The plan for transition shall include a date for implementation during fiscal year 2007 and shall take effect no later than September 30, 2007.

## **SEC. 504. TRANSFER OF FUNCTIONS OF ASSISTANT SECRETARY FOR INDIAN AFFAIRS.**

(a) Transfer of Functions - There is transferred to the Under Secretary any function of the Assistant Secretary for Indian Affairs that has not been carried out by the Assistant Secretary as of the date of enactment of this Act.

(b) Determinations of Certain Functions by the Office of Management and Budget- If necessary, the Office of Management and Budget shall make any determination relating to the functions transferred under subsection (a).

(c) Personnel Provisions-

(1) APPOINTMENTS - The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) REQUIREMENTS - Except as otherwise provided by law--

(A) an officer or employee described in paragraph (1) shall be appointed in accordance with the civil service laws; and

(B) the compensation of the officer or employee shall be fixed in accordance with title 5, United States Code.

(d) Delegation and Assignment-

(1) IN GENERAL - Except as otherwise expressly prohibited by law or otherwise provided by this section, the Under Secretary may--

(A) delegate any of the functions transferred to the Under Secretary by this section and any function transferred or granted to the Under Secretary after the date of enactment of this Act to such officers and employees of the Office as the Under Secretary may designate; and

(B) authorize successive redelegations of such functions as the Under Secretary determines to be necessary or appropriate.

(2) DELEGATION - No delegation of functions by the Under Secretary under this section shall relieve the Under Secretary of responsibility for the administration of the functions.

(e) Reorganization - The Under Secretary may allocate or reallocate any function transferred under this section among the officers of the Office, and establish, consolidate, alter, or discontinue such organizational entities in the Office, as the Under Secretary determines to be necessary or appropriate.

(f) Rules - The Under Secretary may prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Under Secretary determines to be necessary or appropriate to administer and manage the functions of the Office.

(g) Transfer and Allocations of Appropriations and Personnel-

(1) IN GENERAL - Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with, the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office.

(2) UNEXPENDED FUNDS - Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(h) Incidental Transfers-

(1) IN GENERAL - The Director of the Office of Management and Budget, at any time the Director may provide, may make such determinations as are necessary with regard to the functions transferred by this section, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations,



and other funds held, used, arising from, available to, or to be made available in connection with such functions, as are necessary, to carry out this section.

(2) TERMINATION OF AFFAIRS - The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for any further measures and dispositions as are necessary to effectuate the purposes of this section.

(i) Effect on Personnel -

(1) IN GENERAL - Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for a period of at least 1 year after the date of transfer of the employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS - Except as otherwise provided in this section, any person who, on the day preceding the date of enactment of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed to a position in the Office having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of the service of the person in the new position.

(3) TERMINATION OF CERTAIN POSITIONS - Positions whose incumbents are appointed by the President, by and with the advice and consent of the Senate, the functions of which are transferred by this title, shall terminate on the date of enactment of this Act.

(j) Separability - If a provision of this section or the application of this section to any person or circumstance is held invalid, neither the remainder of this section nor the application of the provision to other persons or circumstances shall be affected.

(k) Transition - The Under Secretary may use--

(1) the services of the officers, employees, and other personnel of the Assistant Secretary for Indian Affairs relating to functions transferred to the Office by this section; and

(2) funds appropriated to the functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(l) References- Any reference in a Federal law, Executive order, rule, regulation, delegation of authority, or document relating to the Assistant Secretary for Indian Affairs, with respect to functions transferred under this section, shall be deemed to be a reference to the Under Secretary.

(m) Report on Reorganization and Transition Progress and Recommended Legislation- Not later than 180 days after the effective date of this title, the Under Secretary, in consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, shall submit to Congress a report on the progress of the reorganization and transition as a result of this Act any recommendations relating to additional technical and conforming amendments to Federal law to reflect the changes made by this section. The report on reorganization and transition shall become an annual report that will be submitted along with the Under Secretary's testimony before the appropriate committees of Congress on the President's budget request.

(n) Effect of Section -

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS - Any legal document relating to a function transferred by this section that is in effect on the date of enactment of this Act shall continue in effect in accordance with the terms of the document until the document is modified or terminated by--

(A) the President;

(B) the Under Secretary;

(C) a court of competent jurisdiction; or

(D) operation of Federal or State law.

(2) PROCEEDINGS NOT AFFECTED - This section shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an

application for a license, permit, certificate, or financial assistance) relating to a function transferred under this section that is pending before the Assistant Secretary on the date of enactment of this Act.

## **SEC. 505. OFFICE OF SPECIAL TRUSTEE FOR AMERICAN INDIANS.**

(a) Termination - Notwithstanding sections 302 and 303 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4042; 4043), the Office of Special Trustee for American Indians shall terminate on ~~(the effective date of this section)~~ September 30, 2007.

(b) Transfer of Functions - There is transferred to the Under Secretary any function of the Special Trustee for American Indians that has not been carried out by the Special Trustee as of ~~(the effective date of this section)~~ September 30, 2007. The Special Trustee shall develop a plan for transition of all authority and activity of the Office of Special Trustee to the Under Secretary and submit the plan to the appropriate committees of Congress jointly with the Under Secretary as an element of the transition report in Sec. 504 subsection (m). The plan for transition shall include a date for implementation during fiscal year 2007 and shall take effect no later than September 30, 2007.

(c) Determinations of Certain Functions by the Office of Management and Budget- If necessary, the Office of Management and Budget shall make any determination relating to the functions transferred under subsection (b).

(d) Personnel Provisions-

(1) APPOINTMENTS - The Under Secretary may appoint and fix the compensation of such officers and employees as the Under Secretary determines to be necessary to carry out any function transferred under this section.

(2) REQUIREMENTS - Except as otherwise provided by law--

(A) any officer or employee described in paragraph (1) shall be appointed in accordance with the civil service laws; and

(B) the compensation of such an officer or employee shall be fixed in accordance with title 5, United States Code.

(e) Delegation and Assignment-

(1) IN GENERAL - Except as otherwise expressly prohibited by law or otherwise provided by this section, the Under Secretary may--

(A) delegate any of the functions transferred to the Under Secretary under this section and any function transferred or granted to the Under Secretary after the effective date of this section to such officers and employees of the Office as the Under Secretary may designate; and

(B) authorize successive redelegations of the functions as are necessary or appropriate.

(2) DELEGATION - No delegation of functions by the Under Secretary under this section shall relieve the Under Secretary of responsibility for the administration of the functions.

(f) Reorganization - The Under Secretary may allocate or reallocate any function transferred under subsection (b) among the officers of the Office, and establish, consolidate, alter, or discontinue such organizational entities in the Office as the Under Secretary determines to be necessary or appropriate.

(g) Rules - The Under Secretary may prescribe, in accordance with the provisions of chapters 5 and 6 of title 5, United States Code, such rules and regulations as the Under Secretary determines to be necessary or appropriate to administer and manage the functions of the Office.

(h) Transfer and Allocations of Appropriations and Personnel-

(1) IN GENERAL - Except as otherwise provided in this section, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred by this section, subject to section 1531 of title 31, United States Code, shall be transferred to the Office.

(2) UNEXPENDED FUNDS - Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(i) Incidental Transfers -

(1) IN GENERAL - The Director of the Office of Management and Budget, at any time the Director may provide, may make such determinations as are necessary with regard to the functions transferred by this section, and make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as are necessary, to carry out this section.

(2) TERMINATION OF AFFAIRS - The Director of the Office of Management and Budget shall provide for the termination of the affairs of all entities terminated by this section and for any further measures and dispositions as are necessary to effectuate the purposes of this section.

(j) Effect on Personnel-

(1) IN GENERAL - Except as otherwise provided by this section, the transfer pursuant to this section of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for a period of at least 1 year after the date of transfer of the employee under this section.

(2) EXECUTIVE SCHEDULE POSITIONS - Except as otherwise provided in this section, any person who, on the day preceding the effective date of this section, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed to a position in the Office having duties comparable to the duties performed immediately preceding such appointment, shall continue to be

compensated in the new position at not less than the rate provided for the previous position, for the duration of the service of the person in the new position.

(3) TERMINATION OF CERTAIN POSITIONS - Positions the incumbents of which are appointed by the President, by and with the advice and consent of the Senate, and the functions of which are transferred by this title, shall terminate on the effective date of this section.

(k) Separability - If a provision of this section or the application of this section to any person or circumstance is held invalid, neither the remainder of this section nor the application of the provision to other persons or circumstances shall be affected.

(l) Transition - The Under Secretary may use--

(1) the services of the officers, employees, and other personnel of the Special Trustee relating to functions transferred to the Office by this section; and

(2) funds appropriated to those functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this section.

(m) References- Any reference in a Federal law, Executive order, rule, regulation, delegation of authority, or document relating to the Special Trustee, with respect to functions transferred under this section, shall be deemed to be a reference to the Under Secretary.

(n) Report on Reorganization and Transition Progress and Recommended Legislation- Not later than 180 days after the effective date of this title, the Under Secretary, in consultation with the appropriate committees of Congress and the Director of the Office of Management and Budget, shall submit to Congress a report on the progress of the reorganization and transition as a result of this Act any recommendations relating to additional technical and conforming amendments to Federal law to reflect the changes made by this section. The report on reorganization and transition shall become an annual report that will be submitted along with the Under Secretary's testimony before the appropriate committees of Congress on the President's budget request.

(o) Effect of Section -

(1) CONTINUING EFFECT OF LEGAL DOCUMENTS - Any legal document relating to a function transferred by this section that is in effect on the effective date of this section shall continue in effect in accordance with the terms of the document until the document is modified or terminated by--

- (A) the President;
- (B) the Under Secretary;
- (C) a court of competent jurisdiction; or
- (D) operation of Federal or State law.

(2) PROCEEDINGS NOT AFFECTED - This section shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an application for a license, permit, certificate, or financial assistance) relating to a function transferred under this section that is pending before the Special Trustee on the effective date of this section.

(p) Effective Date - This section shall take effect on December 31, 2008.

## **SEC. 506. REVIEW AND OVERSIGHT OF THE INDIAN TRUST**

### (A) ASSISTANT INSPECTOR GENERAL FOR THE INDIAN TRUST –

(1) ESTABLISHMENT – An Assistant Inspector General for the Indian Trust shall be established within the Office of the Inspector General in the Department of Interior.

(2) APPOINTMENT – Appointment shall be made in accordance with the Inspector General Act of 1978 and applicable laws and regulations governing the civil service.

(3) DUTIES AND RESPONSIBILITIES – The duties and responsibilities of the Assistant Inspector General for the Indian Trust are as follows:

(a) oversee internal investigations, performance reviews, audits, and appeals with respect to the United States' trust responsibilities to American Indian tribes and individuals as provided for in the American Indian Trust Fund Management Reform Amendments Act of 2005.

(b) initiate, conduct and supervise audits and investigations in the Department of Interior as the Assistant Inspector General for the Indian Trust considers appropriate for good cause shown whether the requests for such investigations come from Department officials, Indian tribes or individual Indian beneficiaries.

(c) when Indian tribes and individual Indian beneficiaries provide a written request for action from the Assistant Inspector General for the Indian Trust, a response as to whether or not the requested action will be carried out must be provided within 30 days of receipt of the request. For decisions not to carry out the requested action, a detailed explanation of the grounds for the Assistant Inspector General's decision must be provided.

(4) APPLICABILITY TO INDIAN TRIBES - The responsibility for supervision of programs and operations of the Department described in paragraphs (3)(a), (3)(b) and (3)(c) shall not extend to tribes or tribal organizations carrying out trust programs, functions, services and activities pursuant to Title III or this Act or pursuant to agreements under the ISDEAA. The Assistant Inspector General shall not investigate, audit, enforce or otherwise exercise any duties or responsibilities authorized in this section with respect to tribes or tribal organizations carrying out trust management programs, functions, services and activities except:

(1) where there is a clear violation of trust management standards recognized in federal law or as set forth in agreements entered into pursuant to Title III of this Act or pursuant to the ISDEAA; or

(2) upon the request of a tribe or tribal organization

(4) REPORTING TO CONGRESS – The Assistant Inspector General for the Indian Trust shall provide an annual report to the Senate Committee on Indian Affairs and the House Resources Committee which shall include, but not be limited to, the duties and responsibilities identified in this subsection.



(a) The Assistant Inspector General shall be available to appear at annual hearings to discuss the report and its implications.

(B) ANNUAL CONGRESSIONAL OVERSIGHT HEARING

(1) The Senate Committee on Indian Affairs and the House Committee on Resources shall hold an annual oversight hearing on American Indian Trust issues, including the Assistant Inspector General's annual report.

(2) Additionally the committees shall consider other appropriate topics for the annual oversight hearings based on consultation with Indian tribes, individual Indian beneficiaries and agency officials.



**(SEC. 507)HIRING PREFERENCE.**

In appointing or otherwise hiring any employee to the Office, the Under Secretary shall give preference to Indians in accordance with section 12 of the Act of June 8, 1934 (25 U.S.C. 472).

**SEC. 508 (7). AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this title.

**TITLE VI--AUDIT OF INDIAN TRUST FUNDS**

**SEC. 601. AUDITS AND REPORTS.**

(a) Financial Statements and Internal Control Report-

(1) FINANCIAL STATEMENTS - For each fiscal year beginning after the enactment of this Act, the Secretary of Interior shall prepare financial statements for individual Indian, Indian tribal, and other Indian trust accounts in accordance with generally accepted accounting principles of the Federal Government.

(2) INTERNAL CONTROL REPORT - Concurrently with the financial statements under by paragraph (1), the Secretary shall prepare an internal control report that--

(A) establishes the responsibility of the Secretary for establishing and maintaining an adequate internal control structure and procedures for financial reporting under this Act; and

(B) assesses the effectiveness of the internal control structure and procedures for financial reporting under subparagraph (A) during the preceding fiscal year.

(b) Independent External Auditor -

(1) IN GENERAL - The Comptroller General of the United States shall enter into a contract with an independent external auditor to conduct an audit and prepare a report in accordance with this subparagraph.

(2) AUDIT REPORT - An independent external auditor shall submit to the Committee on Indian Affairs of the Senate, and make available to the public, an audit of the financial statements under subsection (a)(1) in accordance with--

(A) generally accepted auditing standards of the Federal Government; and

(B) the financial audit manual jointly issued by the Government Accountability Office and the Council on Integrity and Efficiency of the President.

(3) ATTESTATION AND REPORT - In conducting the audit under paragraph (2), the independent external auditor shall attest to, and report on, the assessment of internal controls made by the Secretary under subsection (a)(2)(B).

(4) PAYMENT FOR AUDIT AND REPORT -

(A) TRANSFER OF FUNDS - On request of the Comptroller General, the Secretary shall transfer to the Government Accountability Office from funds made available

for administrative expenses of the Department of Interior the amount requested by the Comptroller General to pay for an annual audit and report.

(B) CREDIT TO ACCOUNT -

(i) IN GENERAL - The Controller General shall credit the amount of any funds transferred under subparagraph (A) to the account established for salaries and expenses of the Government Accountability Office.

(ii) AVAILABILITY - Any amount credited under clause (i) shall be made available on receipt, without fiscal year limitation, to cover the full costs of the audit and report.

**SEC. 602. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as are necessary to carry out this title.

*END*

URAT I